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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,209	09/10/2003	Barry H. Ginsberg	45716	3221

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EXAMINER

NASSER, ROBERT L

ART UNIT	PAPER NUMBER
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3735

MAIL DATE	DELIVERY MODE
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03/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/658,209	Applicant(s) GINSBERG, BARRY H.	
	Examiner ROBERT L. NASSER	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-9, 11, 12, 15-25, 27-30, 32, 33, 35-48, 50, 51, 53-62, 65 and 67-71 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15-21, 53-62, 65 and 67-69 is/are allowed.
- 6) ☒ Claim(s) 1-4, 8, 9, 11-12, 22-25, 29, 30, 32, 33, 35, 36, 43-46, 50, 51, 70, 71 is/are rejected.
- 7) ☒ Claim(s) 6, 7, 27, 28, 37-42, 47 and 48 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-4, 6-9, 11, 12, 22,25, 27-30, 32, and 33 are objected to in that it is unclear what the relationship between the annunciating step at the top of the claim and the displaying step in the bottom of the claim is. It appears that they are supposed to be the same step, but the relationship is unclear.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 22, 23, 24, and 44 are rejected under 35 U.S.C. 102(e) as anticipated by Causey III et al 6558320 or, in the alternative, under 35 U.S.C. 103(a) as obvious over Causey III in view of Smith 5108889. Causey teaches a device for making multiple measurements of glucose values, and computing an average value of the glucose values, and then allowing a user to scroll through a display sequence that includes the individual values (See column 11, lines 6-8). As such, it receives a user

request to annunciate the average and each of the individual measured values in a scroll like (round robin) sequence. Hence, there is a first area for displaying constituent values. The examiner notes that Causey does not state that an indicator is displayed in a second display area. However, the examiner notes that Causey has to have an indicator to be able to identify which data point is being displayed. Alternatively, the examiner notes that Smith shows a method to scroll through constituent data, where a time indicator is displayed with the data. Hence, it would have been obvious to modify Causey to display an indication of the time for each sample, so as to alert the user of when the data has been obtained. The examiner notes that since each data point has a different time reference, then the device displays n indicators with n data points. In addition, since the indicator is separate from the data on the display, they are displayed in first and second areas. Claim 22 is rejected in that there is an input device to scroll through the data.

Claims 4, 8, 9, 11, 12, 25, 29, 30, 32, 33, 43, 45, 46, 50, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Causey III et al in view of Smith. With respect to claim 4, Causey does not state how many values are used in the average. However, the examiner takes official notice that it is well known to provide an average value with more than 2 values, to provide a more accurate average. Hence, it would have been obvious to modify to use more than 2 values in the average, in order to provide a better picture of the overall patient condition. As such, the third and so on values would be annunciated sequentially until the last value has been annunciated. Claim 11 is rejected in that the exact form of the indicators on the display has not been

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disclosed to be for a particular purpose or to solve a stated problem. As such, the exact form would have been a mere matter of design choice for one skilled in the art, as all indicators appear to function equally as well as the others. Claim 12 is rejected in that the time and day are also displayed. Claim 43 is rejected in that the exact form of the input device would have been a mere matter of design choice. Claims 25, 29, 30, 32, 33, 45, 46, 50, and 51 are rejected for the reasons given above.

Claims 35, 36, 70, and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Causey III in view of Bortz et al 2003/0216628. In addition to the features of Causey III discussed above, Bortz lets a user select from among multiple time periods each day over which to calculate an average {see paragraphs [0024]-[0027]}. Such a procedure allows the user to have a more accurate picture of their glucose readings throughout the day. As such, it would have been obvious to modify Causey to allow average values to be calculated for multiple daily time periods, to enable more precise control of a users glucose levels. The time periods in Bortz include post-meal and night.

Claims 6, 7, 27, 28, 37-42 and 47-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 6, 7, 27, 28, 47, and 48 define over the art in that none of the art displays the variability indicator as claimed.

Claims 15-21, 53-62, 65, and 67-69 are allowable. Claims 15-21, 37-42, 53-62, 65, and 67-69 define over the art in that none of the art selects a stored data point to display if the time period has not passed, as claimed.

Applicant's arguments filed 12/14/2007 have been fully considered but they are moot in view of the new grounds of rejection.

Applicant has asserted that Causey does not have the first and second display areas. The examiner has clarified his previous position above

Applicant has also asserted that the relationship between the annunciating step and the displaying step in claims enumerated above is clear. However, as written, the claim recites annunciating an average level and displaying an average level. It is unclear to the examiner whether the average level is meant to be displayed twice. Hence, the objection remains pending clarification.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert L. Nasser whose telephone number is 571 272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ROBERT L. NASSER JR./

Robert L. Nasser
Primary Examiner
Art Unit 3735

RLN
March 6, 2008